

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

JEFFERSON-PILOT INVESTMENTS, INC.,)	
)	
Plaintiff,)	
v.)	Case No. 10-CV-07633
CAPITAL FIRST REALTY, INC.; SUNSET)	
VILLAGE LIMITED PARTNERSHIP; TCF)	Hon. Matthew F. Kennelly
NATIONAL BANK; L H BLOCK ELECTRIC)	
COMPANY, INC.; DOHERTY,)	Magistrate Judge Jeffrey N. Cole
GIANNINI, REITZ CONSTRUCTION, INC.;)	
EAGLE HEATING & COOLING INC.;)	
LAYNE CHRISTENSEN COMPANY; and)	
LAYNE-WESTERN, a division of Layne)	
Christensen Company,)	
Defendants.)	
JEFFERSON-PILOT INVESTMENTS, INC.,)	
Counter-Defendant/Counter-Plaintiff,)	
v.)	
THE KLARCHEK FAMILY TRUST; JOHN)	
COSTELLO, not individually but solely as)	
Trustee of the Klarchek Family Trust; JOHN)	
LOGIUDICE, not individually but solely as)	
Trustee of the Klarchek Family Trust; WOLIN,)	
KELTER and ROSEN, LTD.; BAUCH &)	
MICHAELS, LLC; CAPITAL FIRST)	
REALTY, INC.; CAPITAL HOME SERVICES)	
CORP.; GILSON, LABUS & SILVERMAN,)	
LLC; BRIAN GALLAGHER; JAY)	
KLARCHEK; and SUNSET VILLAGE)	
LIMITED PARTNERSHIP,)	
Third-Party Defendants.)	

THIRD-PARTY DEFENDANT GILSON, LABUS & SILVERMAN, LLC'S
MOTION TO JOIN IN AND ADOPT
THIRD-PARTY DEFENDANT BAUCH & MICHAELS, LLC'S MOTION TO DISMISS

Third-Party Defendant Gilson, Labus & Silverman, LLC ("Gilson"), by and through its attorney, Mark J. Rose, moves this Court for leave to join in and adopt as its own Third-Party Defendant Bauch & Michaels, LLC's Motion to Dismiss ("Motion to Dismiss") the Third-Party Complaint ("Third-Party Complaint") of Counter-Defendant/Counter-Plaintiff Jefferson-Pilot

Investments, Inc. (“Jefferson-Pilot”). In support of such Motion, Gilson respectfully states as follows:

1. On September 26, 2011, Jefferson-Pilot filed its Third-Party Complaint herein. Counts I, II and IV of Jefferson-Pilot’s Third-Party Complaint seek relief against various third-party defendants including Bauch & Michaels, LLC (“Bauch & Michaels”) and Gilson.¹

2. Count I of Jefferson-Pilot’s Third-Party Complaint alleges a claim for actual fraud against all third-party defendants (except Brian Gallagher and Jay Klarchek) under Sections 5(a)(1), (2) and 8 of the Illinois Uniform Fraudulent Transfer Act, 740 ILCS 160/5(a)(1), (2) and 8. Count II alleges a claim for constructive fraud against all third-party defendants (except Brian Gallagher and Jay Klarchek) under Sections 5(a)(2), 6(a) and 8 of the Illinois Uniform Fraudulent Transfer Act, 740 ILCS 160/5(a)(2), 6(a) and 8. Count IV alleges that all third-party defendants (except Brian Gallagher and Jay Klarchek) have been unjustly enriched.

3. The allegations contained in Counts I, II and IV of Jefferson-Pilot’s Third-Party Complaint against Bauch & Michaels are identical to the allegations against Gilson except that Gilson is alleged to have received a payment in the amount of \$16,327.00. (The \$16,327.00 payment was a retainer for accounting services to be provided by Gilson in connection with the preparation of 2009 and 2010 income tax returns for Sunset Village Limited Partnership (“Sunset Village”).

4. On November 22, 2011, Third-Party Defendant Bauch & Michaels, LLC filed its Motion to Dismiss herein [Dkt. #197]. A copy of such Motion is attached hereto and made a part hereof as Exhibit “1.”

5. Bauch & Michaels’ Motion to Dismiss seeks dismissal of Jefferson-Pilot’s Third-Party Complaint on a variety of grounds.

¹ Although Count VI of Jefferson-Pilot’s Third-Party Complaint for tortious interference with contractual relationship seeks relief against Bauch & Michaels, Count VI seeks no relief against Gilson.

- a) First, Bauch & Michaels submits that Jefferson-Pilot did not have a security interest in the rents generated by Sunset Village's ownership and operation of a manufactured housing community in Glenview, Illinois. Under Illinois real property law, a mortgagee is not entitled to collect and may not restrict the mortgagor's use of rents until it obtains actual possession of the real property, even if the mortgagor has executed a valid assignment of rents. Since Jefferson-Pilot did not become entitled to the rents until a receiver was appointed, Jefferson-Pilot had no interest in the rents that form the basis for a claim against Bauch & Michaels.
- b) Second, any limitation on Sunset Village's right to use rents under the Bankruptcy Code and the cash collateral orders terminated upon dismissal of Sunset Village's bankruptcy case and by the Bankruptcy Court's refusal to order the turnover of the rents or the continuation of the cash collateral orders subsequent to dismissal.
- c) Third, Jefferson-Pilot's claim for actual or constructive fraud under Counts I and II must be dismissed because such counts are legally insufficient on their face. Sunset Village had no legal obligation to maintain the rents for Jefferson-Pilot's benefit until Sunset Village was ordered to do so by this Court.
- d) Fourth, Count IV of Jefferson-Pilot's Third-Party Complaint for unjust enrichment is not applicable to Sunset Village's use of the rents from the manufactured home community. Additionally, the receipt of payment of a debt, much less the payment of a retainer for future services, is not unjust enrichment.

6. Since Jefferson-Pilot's claim against Gilson only seeks recovery of \$16,327.00, in the interest of economy and to streamline the issues which are pending before this Court, Gilson

seeks to and hereby adopts and incorporates by reference as its own the arguments made by Bauch & Michaels in its Motion to Dismiss with regard to Counts I, II and IV of Jefferson-Pilot's Third-Party Complaint.

WHEREFORE, Third-Party Defendant Gilson, Labus & Silverman, LLC respectfully moves this Court for leave to join in and adopt as its own Third-Party *Defendant Bauch & Michaels, LLC's Motion to Dismiss the Third-Party Complaint* of Counter-Defendant/Counter-Plaintiff Jefferson-Pilot Investments, Inc.; and for such further relief as to the Court shall seem just and proper.

Date: November 22, 2011

Respectfully submitted,

GILSON, LABUS & SILVERMAN, LLC

By: /s/ Mark J. Rose
Its Attorney

Mark J. Rose, Esq. (#2378728)
LAW OFFICES OF MARK J. ROSE
200 West Adams Street, Suite 2850
Chicago, Illinois 60606
312.704.1446

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing was electronically filed with the Court on November 22, 2011. Notice of this filing will be sent by operation of the Court's electronic filing system to all ECF registered parties indicated below. Parties may access this filing through the Court's CM/ECF system.

Michael J. Kralovec, Esq.
mkralovec@nlklaw.com
Joseph R. Lemersal, Esq.
jlemersal@nlklaw.com
Kralovec Meenan LLP
53 West Jackson Blvd., Suite 1102
Chicago, Illinois 60604

John David Galarnyk, Esq.
john@galarnykltd.com
Galarnyk & Associates
Three First National Plaza
70 W. Madison Street, Suite 2100
Chicago, Illinois 60602

Harold Rosen, Esq.
hrosen@wolinlaw.com
Jeffrey A. Schulman, Esq.
jschulman@wolinlaw.com
Wolin and Rosen
55 West Monroe Street, Suite 3600
Chicago, Illinois 60603

Sara Allison Cooper, Esq.
scooper@bupdlaw.com
Brown, Udell, Pomerantz & Delrahim, Ltd.
1332 N. Halsted, Suite 100
Chicago, Illinois 60642

Leonard S. Shifflett, Esq.
leonard.shifflett@quarles.com
Faye B. Feinstein, Esq.
faye.feinstein@quarles.com
Michael S. Rhinehart, Esq.
michael.rhinehart@quarles.com
Quarles & Brady LLP
300 North LaSalle Street, Suite 4000
Chicago, Illinois 60654

Vincent Thomas Borst, Esq.
vborst@rsplaw.com
Catherine A. Cooke, Esq.
ccooke@rsplaw.com
Robbins, Salomon & Patt, Ltd.
25 East Washington, Suite 1000
Chicago, Illinois 60602

Marc S. Mayer, Esq.
mmayer@mayerandmarshlaw.com
Michael Vincent Marsh, Esq.
mmarsh@mayerandmarshlaw.com
Mayer and Marsh
123 West Madison Street, Suite 700
Chicago, Illinois 60602

Paul M. Bauch, Esq.
pbauch@bauch-michaels.com
Carolina Y. Sales, Esq.
csales@bauch-michaels.com
Kenneth A. Michaels, Jr.
kmichaels@bauch-michaels.com
Bauch & Michaels, LLC
53 W Jackson Blvd, Suite 1115
Chicago, Illinois 60604

John J. Duffy, Esq.

john.duffy@dbmslaw.com

Daniel Joseph Cozzi, Esq.

cozzi@dbmslaw.com

Donohue Brown Mathewson & Smyth

140 S. Dearborn, Suite 800

Chicago, Illinois 60603

Lawrence Michael Karlin, Esq.

lkarlin@lw-llp.com

Karlin Eide LLP

651 W Washington Street , Suite 205

Chicago Illinois 60661

Joseph R. Lemersal, Esq.

jlemersal@nlklaw.com

Nash, Lulich & Kralovec

53 West Jackson Boulevard

Suite 1102

Chicago, Illinois 60604

/s/ Mark J. Rose

Mark J. Rose, Esq.

Mark J. Rose, Esq. (#2378728)

LAW OFFICES OF MARK J. ROSE

200 W. Adams Street, Suite 2850

Chicago, Illinois 60606

312.704.1446